3 is of vital importance. This word cannot be construed logically unless it confines the operation of section 7 to attempted ejections of one party by his immediate landlord. In this case the sub-tenants now before the Court are not sub-tenants. They are mere trespassers.

The original tenant, The Salvation Army, had a tenancy for a time certain. It was not a monthly tenancy and they had no rights whatsoever after the date of the expiration of their tenancy. Nor can they acquire such rights except by some further agreement expressed or implied between them and the landlord. The so called sub-tenants could not obtain through them any greater rights than they possessed.

If the construction contended for by the so called sub-tenant is correct then a landlord with a whole row of houses and tenants waiting to rent the whole of each of them might be prevented from letting any house solely by reason of one sub-tenant at $1 per month in each house occupying a small cubicle only or alternatively that landlord would be compelled to embark himself on a retail cubicle business. The Enactment cannot have intended such results.

He cited **Hylton v. Heal**(1).

H. R. Rix for the sub-tenants.—The Enactment is perfectly clear—"tenant" includes sub-tenant. Only question for the Court is whether the Rent Restriction Board must give permission before action is commenced to eject sub-tenant. If landlord can eject a sub-tenant without permission of the Board then by interposing a "nominal" tenant between landlord and occupier the landlord can get round the Enactment and eject sub-tenant without sanction of the Board. The whole object of the Enactment to protect tenants or sub-tenants against their landlords would thus be frustrated.

Murray-Aynsley, J.—This is a point of law reserved by a Board established under the Rent and Charged Land (Restriction) Enactment No. 14 of 1940.

The facts are:

The landlord let the premises to a tenant for a term.

During the currency of the term the tenant lawfully sub-let part of the premises.

At the expiry of the term the tenant vacated the premises, but the sub-tenants refuse to do so.

The question is whether the landlord must obtain permission of the Board under section 7 before he takes steps to eject the sub-tenants.

Now it is I think clear that if the original tenants had refused to move they would have been entitled to the protection of the Enactment. That is to say a person whose term has expired is a tenant within the meaning of the Enactment, because it is only when the tenancy has come to an end that ejectment proceedings can be taken.

By section 3 the word "tenant" includes "sub-tenant", and it should be noted that, in this respect it differs from the English legislation; this is without any qualification of the context permitting or otherwise.

This, I think, rules out the case cited to me *Hylton v. Heal*(1) which is a case where the context did not permit the term tenant including "sub-tenant".

In the present case I think the whole matter would be perfectly plain but for the use of the word "his".

It has been argued on behalf of the landlord that "his" means that there must be an immediate relation of landlord and tenant and that the relation between the landlord and the sub-tenant of his tenant cannot be described as "his". I do not think the word "his" has any technical meaning and I do not suppose that the draftsman intended to introduce a technicality.

In ordinary language "my tenant" means the tenant of land belonging to me. I do not think therefore that the expression "his" tenant necessarily excludes a sub-tenant; the more so when it is remembered that protection to tenants which excluded sub-tenants would be illusory. The answer must be that the landlord must obtain leave of Board before he takes steps to eject the sub-tenants.

Order accordingly.

MURRAY-AYNSLEY, J.

February 10, 1941.

WILL and LEWIS vs. COLLECTOR OF ESTATE DUTY, F.M.S.

[Orig. Civil Juris. (Murray-Aynsley, J.) Feb. 10, 1941]

Estate Duty Enactment (Cap. 136), sections 4, 5 and 6—Transfer of charge to secure less than amount due on charge—No declaration of trust as to balance—Liability of transferee's estate to estate duty.

The original chargee transferred the whole of his interest ($30,000) in a charge to a Bank to secure his overdraft with that Bank. The overdraft standing at $12,000, the Bank transferred the whole of the interest of the original chargee to the deceased, and it was admitted that the deceased's beneficial interest in the charge was to secure the repayment of this sum of $12,000 only. The deceased made no declaration of trust in respect of the balance of the original chargee's interest in the Charge.

Held, that when the deceased died he was the registered proprietor of an interest in a charge to the extent of $30,000. Although his beneficial interest was for a lesser amount, the whole of the registered interest was property passing on his death. Once property is included in that passing on the death of the deceased duty is payable unless it can be shown to come within

an exception. The exception created by section 6 of the Estate Duty Enactment did not apply because no declaration of trust had been made. The deceased's estate was therefore liable to estate duty in respect of the whole of the interest, namely $30,000, registered in the name of the deceased.

Cases referred to—

(1) *Re Osborn's Mortgage Trusts* L.R. 12 Eq. 392.

(2) *Re Barter's Mortgage Trusts* (1888) 58 L.J. 303.

(3) *Marshal v. Crutwell* 20 Eq. Cases 328.

J. M. M. Lewis for applicants.

I refer to—

(1) The definition of "trust" in the Trustee Enactment which excludes therefrom the duties of a chargee.

(2) Re Osborn's Mortgage Trusts(1).

(3) Re Barter's Mortgage Trusts(2).

(4) Section 6 Estate Duty Enactment.

M. C. Hay, Deputy Commissioner of Lands, for respondent.—At deceased's death the registered chargees were the deceased and G. G. James. Since it is arguable that either joint chargee could have given a discharge for the whole amount secured **prima facie** my case would be that the whole amount was "property of which the deceased was competent to dispose" in the meaning of Cap. 136 Section 5 (i). But Marshal and Crutwell(3) is some authority for including only deceased's share so my claim is limited to that.

The registered transferee of a charge is the "chargee" in the meaning of the Land Code (sections 2 and 96) and his title is indefeasible save as provided in section 42 (i) (b). The only persons who could have proceeded under the charge were the chargees and they would have become the owners at law of any moneys recovered thereunder. Deceased would, I imagine have become a trustee for someone in respect of $18,000; but this trust is not evidenced as required by Cap. 138 section 6.

Per Curiam "Could it properly be called a trust?"

The definition of "Trust" in the Trustee Enactment is a narrow one and probably would not include this obligation. The definition in the Specific Relief Enactment is much wider and probably would include it. But in calling it a trust I am putting the applicant's case as high as I can. It is only under the terms of a trust that this $18,000 could be excluded from the estate, and even on that score the application must, it is submitted, fail because of the second proviso to section 6 (Cap. 136).

Murray-Aynsley, J.—In this case the facts are not in dispute. In 1928 Charles Grenier & Co., Ltd., charged certain lands to George Griffith James and Henry Donald Jansz for $66,000 of which $30,000 was contributed by Jansz.

On July 5th, 1932, the interest of Jansz was transferred to the Chartered Bank. The consideration for this transfer was stated to be "The Chartered Bank allowing me to overdraw my account up to $15,000."

On April 17th 1935 the Chartered Bank transferred this to Frederick John Davy for a consideration of $12,000.

It is not disputed that this was not an out and out sale by the Bank but merely an assignment of the security to Davy who took over the loan by the Bank to Jansz. But the transaction as between Davy and Jansz was never put into writing.

Subsequently Davy died and the present question is what is to be paid by way of estate duty.

The Collector claims that duty should be paid on $30,000, the amount owing on the charge by Grenier & Co., Ltd. The executors contend that duty is only payable on the amount owing by Jansz, viz., $12,000.

No doubt the actual beneficial interest of Davy was only $12,000, but as the law stands duty has to be paid in certain circumstances on property in which the deceased had no beneficial interest.

Section 4 provides that duty shall be paid on property which passes on the death of the deceased. This is the fundamental provision. It is clear that the charge for $30,000 passed on the death of the deceased.

Section 5 has the effect of causing certain things to be included in property passing on the death of the deceased which would not otherwise be included, and section 5 is explained by section 3.

Section 6 is an exception in the case of property of which the deceased was trustee. Section 7-12 are other exceptions. Taking these together it appears that once property is included in that passing on the death of the deceased duty is payable unless it can be shewn to come within an exception. The only exception that could be applicable here is section 6. No doubt there might be a question as to whether the deceased was a trustee as there is no definition of "trustee" in the Enactment, but the answer to that would be that unless deceased were a trustee duty on the larger amount would be payable in any event, and in the present case it is admitted that the conditions of the proviso to section 6 have not been complied with. It was certainly open to deceased to bring the matter within the proviso to section 6 by a declaration of trust, but this was not done.

The question that arises as to the justice or expediency of section 6 as it stands is not for me.

Judgment in favour of the Collector of Estate Duty, F.M.S., with costs.